

06 Jul 2022
Eurex Clearing

Implementation of Regulatory Requirements stipulated by the CCP Recovery and Resolution Regulation (Regulation (EU) 2021/23) into the Legal Framework of Eurex Clearing AG

Eurex Clearing Circular 050/22 Implementation of Regulatory Requirements stipulated by the CCP Recovery and Resolution Regulation (Regulation (EU) 2021/23) into the Legal Framework of Eurex Clearing AG

1. Introduction

This circular contains information with respect to the service offering of Eurex Clearing AG and introduces amendments to the Clearing Conditions of Eurex Clearing AG (Clearing Conditions), the FCM Regulations of Eurex Clearing AG (FCM Regulations) as well as the Default Management Auction Rules (DM Auction Rules) regarding the following topic:

- ◆ Implementation of the regulatory requirements stipulated by the European regulation on a framework for the recovery and resolution of central counterparties (Regulation (EU) 2021/23).

The planned effective date of these amendments is **12 August 2022**.

2. Required action

No specific actions are required by clients.

3. Details of the initiative

Regulation (EU) 2021/23 requires Eurex Clearing AG to implement various provisions into its legal framework to comply with regulatory requirements.

The contemplated amendments attached to this circular intend to implement the following regulatory requirements:

a) Client Participation in Auctions (Article 18 (1) Regulation (EU) 2021/23)

Pursuant to Article 18 (1) of the Regulation, BaFin, acting in its capacity as Eurex Clearing AG's resolution authority may require Eurex Clearing AG to instruct Clearing Members to invite their clients to participate directly in default management auctions organized by the CCP when the nature of the auction justifies this exceptional participation.

Upon request of Eurex Clearing AG, Clearing Members shall inform their clients about the option to participate in a Default Management auction (DM Auction, DM Bonds Auction or Hedging Auction) following the instructions received from the CCP.

Alternatively, Eurex Clearing AG may directly inform any Disclosed Direct Client or FCM Client, if Eurex Clearing AG deems the participation as appropriate.

b) Enforcement of Outstanding Obligations (Article 27 (5) of Regulation (EU) 2021/23)

If BaFin, acting in its capacity as Eurex Clearing AG's resolution authority, makes use of one or more resolution measures and if BaFin prior to such resolution measures refrained partially or fully from enforcing certain rights under the Clearing Conditions or FCM Regulations (i.e. to call for Further Contributions, Further BCM Contributions or Further FCM Clearing Member Contributions, to exercise its cash settlement rights (partial tear-up)), BaFin shall be entitled to enforce any of such refrained rights within 18 months after the CCP is considered to be failing or likely to fail.

c) Termination Right for Resolution Authorities of Eurex Clearing (Article 29 of Regulation (EU) 2021/23)

Article 29 of the Regulation (EU) 2021/23 requires a CCP to implement provisions in its rulebooks, which entitle BaFin, acting in its capacity as Eurex Clearing AG's resolution authority, to terminate some or all of the following contracts under resolution: (i) contracts with the Clearing Member in default; (ii) contracts of the affected clearing service or asset class; (iii) the other contracts of the CCP under resolution.

d) Resolution "Variation Margin Gains Haircutting" (VMGH) (Article 30 of Regulation (EU) 2021/23)

Pursuant to Article 30 of the Regulation (EU) 2021/23, Eurex Clearing AG is required to implement provisions in its rulebooks, which entitle BaFin, acting in its capacity as Eurex Clearing AG's resolution authority, to reduce the daily profits non-defaulting Clearing Members and FCM Clearing Members will receive from cleared Transactions which foresee daily Variation Margin or Settled-to-Market (STM) Amount payments after the occurrence of a Termination with respect to a Clearing Member or FCM Clearing Member (Variation Margin Gains Haircutting – VMGH).

The total amount needed to cover Eurex Clearing AG's losses will be shared between all Clearing Members on a pro-rata basis.

e) Resolution Cash Calls (Article 31 of Regulation (EU) 2021/23)

Pursuant to Article 31 of the Regulation (EU) 2021/23, Eurex Clearing AG is required to implement provisions in its rulebooks, which entitle BaFin, acting in its capacity as Eurex Clearing AG's resolution authority, to require the non-defaulting Clearing Members and FCM Clearing Members to provide further contributions to the Default Fund in the form of cash (Resolution Cash Calls) to cover any outstanding default loss or non-default loss.

The Resolution Cash Calls may amount up to twice the applicable Contribution Requirement of the relevant Clearing Member.

f) Recognition of Resolution Measures (Article 53 (2) of Regulation (EU) 2021/23)

Furthermore, according to Article 53 (2) of the Regulation (EU) 2021/23, Eurex Clearing AG is required to implement provisions in its rulebooks pursuant to which the Clearing Members and FCM Clearing Members agree to be bound by any resolution tool taken by BaFin, acting in its capacity as Eurex Clearing AG's resolution authority, in respect to the Clearing Member's, Basic Clearing Member's or FCM Clearing Member's assets, rights, obligations and liabilities under Clearing Conditions or FCM Regulations, including the application of Article 28 (position and loss allocation tools), Article 32 (write down and conversion tool), Article 55 (power to suspend certain obligations), Article 56 (power to restrict the enforcement of security interests) and Article 57 (power to temporarily suspend termination rights) of the Regulation (EU) 2021/23.

To reflect the proposed changes, the following provisions will be added as outlined in Attachments 1 to 3:

- ◆ Attachment 1: Number 3.4.5 of the DM Auction Rules
- ◆ Attachment 2: Chapter I Part 1 Number 17.7.2 of the Clearing Conditions
- ◆ Attachment 3: Chapter I Number 16.6.2 of the FCM Regulations

Publication of amendments to the Clearing Conditions

As of the effective date, the full versions of the amended DM Auction Rules, Clearing Conditions and the FCM Regulations will be available for download on the Eurex Clearing website www.eurex.com/ec-en/ under the following link:

Rules & Regs > Eurex Clearing Rules and Regulations

The changes and amendments to the DM Auction Rules, Clearing Conditions and FCM Regulations published by this circular are deemed accepted by each affected contractual party of Eurex Clearing, unless the respective contractual party objects by written notice to Eurex Clearing within the first ten (10)

Business Days after publication. Any ordinary right of Eurex Clearing to terminate the respective contract (including a Clearing Agreement or a FCM Clearing Agreement, if applicable) shall remain unaffected.

Unless the context requires otherwise, terms used and not otherwise defined in this circular shall have the meaning ascribed to them in the Clearing Conditions or FCM Clearing Conditions of Eurex Clearing AG, as applicable.

Attachments:

- ◆ Attachment 1 – Amendments to the DM Auction Rules
- ◆ Attachment 2 – Amendments to the Clearing Conditions
- ◆ Attachment 3 – Amendments to the FCM Regulations

Further information

Recipients: All Clearing Members, Basic Clearing Members, Disclosed Direct Clients and FCM Clearing Members of Eurex Clearing AG, vendors and other affected contractual parties

Target groups: Front Office/Trading, Middle + Backoffice, IT/System Administration, Auditing/Security Coordination

Contact: client.services@eurex.com

Web: www.eurex.com/ec-en/

Authorized by: Dmitrij Senko

Further information

[!\[\]\(758ebdf4629c903da74c2e079717ae32_img.jpg\) Attachment 1 to Eurex Clearing circular 050/22](#)

[!\[\]\(fe3aebe81acea8d45108cd2768939da7_img.jpg\) Attachment 2 to Eurex Clearing circular 050/22](#)

[!\[\]\(626ce8ac21792b9405bfddfea8e0c96a_img.jpg\) Attachment 3 to Eurex Clearing circular 050/22](#)

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3 Participation in DM Auctions

[...]

3.4 Client Participant

[...]

3.4.4 The appointment of the Client Participant can be terminated by the Clearing Member or FCM Clearing Member at any time. Such termination requires a written notice to Eurex Clearing AG by the Clearing Member or FCM Clearing Member with a prior notice period of 30 calendar days.

3.4.5 If BaFin requires Eurex Clearing AG to instruct Clearing Members or FCM Clearing Members to invite their clients to participate in DM Auctions, DM Bonds Auction or Hedging Auctions pursuant to Article 18 (1) (I) of the Regulation (EU) 2021/23 dated 16 December 2020 on a framework for the recovery and resolution of central counterparties, Eurex Clearing AG shall be entitled to instruct the Clearing Member to inform its Disclosed Direct Clients or any other customer or to instruct the FCM Clearing Member to inform its FCM Clients about (i) the option to participate in DM Auctions, DM Bonds Auctions or Hedging Auctions and (ii) the cut-off time, as determined by Eurex Clearing AG with respect to the relevant DM Auction, DM Bonds Auction or Hedging Auction, until which the relevant Disclosed Direct Client, other customer or FCM Client has to take the decision to participate or not to participate (“**Client Participation Cut-Off Time**”).

The Clearing Member or FCM Clearing Member shall inform the relevant Disclosed Direct Client, other customer or FCM Client about the fact that, if it is willing to participate in a DM Auction, DM Bonds Auction or Hedging Auction, it shall contact its Clearing Member or FCM Clearing Member and Eurex Clearing AG about its willingness to participate prior to the Client Participation Cut-Off Time.

In such case, the Clearing Member or FCM Clearing Member shall be obliged to submit a completed Client Participation Appointment Form to Eurex Clearing AG with respect to such Disclosed Direct Client, other customer or FCM Client.

Default Management Auction Rules

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The relevant Disclosed Direct Client, other customer or FCM Client shall qualify as Client Participant pursuant to this Number 3.4.

[...]

Chapter I of the Clearing Conditions of Eurex Clearing AG

General Provisions

As of 12.08.2022

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[...]

Chapter I General Provisions

[...]

Part 1 General Clearing Provisions

[...]

17 Miscellaneous

[...]

17.7 General Clearing Provisions in accordance with the CCP Recovery and Resolution Regulation

[...]

17.7.2 Resolution Measures to be taken by the Resolution Authority

(1) General Requirements for Resolution Measures

If BaFin, acting in its capacity as Eurex Clearing AG's resolution authority within the meaning of the CCP Recovery and Resolution Regulation ("Resolution Authority"), determines that all conditions for resolution pursuant to Article 22 (1) of the CCP Recovery and Resolution Regulation are met, the Resolution Authority is entitled to take one of the following resolution measures pursuant to Paragraph (2) to (5) with respect to a Clearing Member or Basic Clearing Member.

(2) Termination and Cash Settlement

(a) The Resolution Authority shall be entitled to exercise the termination right under Chapter I Part 1 Number 7 of the Clearing Conditions in connection with Chapter I Part 2 Subpart A Number 6, Chapter I Part 4 Number 8 and Chapter I Part 6 Number 10 of the Clearing Conditions with respect to a Clearing Member or Basic Clearing Member provided that the applicable requirements are met.

(b) The Resolution Authority shall further be entitled to exercise the following rights with respect to a Clearing Member or Basic Clearing Member:

(i) to terminate and settle in cash DMP Cash Settlement Transactions pursuant to Chapter I Part 1 Number 7.5.4.1 of the Clearing Conditions;

(ii) to establish DM OTC Hedging Transactions, to conduct one or more additional DM OTC Auctions and to establish Additional OTC Transactions pursuant to Chapter I Part 1 Number 7.5.4.2 of the Clearing Conditions; or

(iii) to terminate and settle in cash all Liquidation Group Transactions under a specific Liquidation Group pursuant to Chapter I Part 1 Number 7.5.4.3 of the Clearing Conditions.

(c) Prior to exercising any rights under Paragraphs (a) and (b) above, the Resolution Authority shall inform the relevant Clearing Member or Basic Clearing Member about (i) the date on which such right will be exercised and (ii) any net amount being payable by or to the relevant Clearing Member or Basic Clearing Member.

(d) Any net amount being payable by the Clearing Member or Basic Clearing Member pursuant to Paragraph (a) or (b) shall be provided in accordance with the daily cash processing pursuant to Chapter I Part 1 Number 1.4.1 of the Clearing Conditions.

(e) For the avoidance of doubt, if the Clearing Member or Basic Clearing Member is not able to pay the relevant net amount determined pursuant to Paragraphs (a) or (b), such non-payment will constitute a Termination Event pursuant to Chapter I Part 1 Number 7.2.1 (1) of the Clearing Conditions.

(f) If the Resolution Authority exercised its rights under Paragraph (a) or (b), the Resolution Authority is entitled to suspend or limit the Clearing of such Transaction Types with respect of which it has exercised its rights.

(3) Daily Profits Reduction

The Resolution Authority shall be entitled to exercise Daily Profit Reductions in accordance with this Paragraph (3) to cover any outstanding Default Loss or Non-Default Loss.

(a) This Paragraph (3) applies to Default Losses and Non-Default Losses.

“Default Loss” means any loss incurred by Eurex Clearing AG caused by a Termination, a Basic Clearing Member Termination or the occurrence of a termination with respect to a FCM Clearing Member pursuant to the FCM Clearing Conditions.

“Non-Default Loss” means any loss incurred by Eurex Clearing AG, which does not qualify as a Default Loss.

(b) If

(i) after the occurrence of the Termination Time, the Basic Clearing Member Termination Time or the FCM Clearing Member Termination Time, or

(ii) in case of the occurrence of a Non-Default Loss

the following occurs:

(a) Eurex Clearing AG is obliged to pay a STM VM Amount to a (non-defaulting) Clearing Member with respect to any Eurex Transaction pursuant to Chapter II Part 1 Number 1.2.5 of the Clearing Conditions,

(b) Eurex Clearing AG is Variation Margin Provider or Basic Clearing Member Variation Margin Provider and the (non-defaulting) Clearing Member is Variation Margin Taker or the (non-defaulting) Basic Clearing Member is Basic Clearing Member Variation Margin Taker with respect to any CTM Interest Rate Derivative Transaction pursuant to Chapter VIII Part 2 of the Clearing Conditions,

(c) Eurex Clearing AG is obliged to pay an IRS STM Amount to a (non-defaulting) Clearing Member or (non-defaulting) Basic Clearing Member with respect to any STM Interest Rate Derivative Transaction pursuant to Chapter VIII Part 2 Number 2.2.1 (5) of the Clearing Conditions,

(d) Eurex Clearing AG is Variation Margin Provider and the (non-defaulting) Clearing Member is Variation Margin Taker with respect to any CTM NDF Transaction pursuant to Chapter VIII Part 5 of the Clearing Conditions,

(e) Eurex Clearing AG is obliged to pay a NDF STM Amount to a (non-defaulting) Clearing Member with respect to any STM NDF Transaction pursuant to Chapter VIII Part 4 Number 4.2.1 (5) of the Clearing Conditions,

the Resolution Authority is entitled to

(A) in case of Paragraph (a), partly or fully reduce any STM VM Amount arising from any Eurex Transaction,

(B) in case of Paragraph (b), partly or fully reduce (i) any Variation Margin Requirement or Basic Clearing Member Variation Margin Requirement and (ii) any PAI,

(C) in case of Paragraph (c), partly or fully reduce any IRS STM Amount and any IRS PAA arising from any STM Interest Rate Derivative Transaction,

(D) in case of Paragraph (d), partly or fully reduce (i) any Variation Margin Requirement and (ii) any NDF PAI arising from any CTM NDF Transaction,

(E) in case of Paragraph (e), partly or fully reduce any NDF STM Amount and any NDF PAA arising from any STM NDG Transaction

(each reduction under Paragraphs (A) to (E), a “Daily Profit Reduction”).

(c) The total Daily Profit Reduction, which is needed to cover any outstanding Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all Clearing Members, Basic Clearing Members and FCM Clearing Members and shall be proportional to the open amounts Eurex Clearing AG owes to the relevant Clearing Member, Basic Clearing Member or FCM Clearing Member.

(d) If the Daily Profit Reductions is used by the Resolution Authority to cover any outstanding Non-Default Loss, it shall only be applied up to a cumulative amount equal to the CM Contribution Requirement or the BCM Contribution Requirement to the Default Fund of the relevant Clearing Member or Basic Clearing Member.

The total Daily Profit Reduction, which is needed to cover all outstanding Non-Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all Clearing Members, Basic Clearing Members and FCM Clearing Members and shall be proportional to the CM Contribution Requirement, BCM Contribution Requirement or FCM Contribution Requirement of the relevant Clearing Member, Basic Clearing Member or FCM Clearing Member.

(e) The Resolution Authority shall inform each affected Clearing Member and FCM Clearing Member about the exercise of any Daily Profit Reduction without undue delay. If the Daily Profit Reduction relates to a Client-Related Transaction, the relevant Clearing Member shall inform any affected client about the exercise of the Daily Profit Reduction by the Resolution Authority and the effects of the exercise for such clients.

(f) If, after the exercise of the Daily Profits Reduction, the Resolution Authority determines that the total amount gained through the Daily Profit Reductions exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all Clearing Members, Basic Clearing Members and FCM Clearing Members, which were subject to the Daily Profits Reductions, will be reimbursed accordingly on a pro-rata basis.

(g) All claims for unjust enrichment (*ungerechtfertigte Bereicherung*) or any other restitution or compensation claim against Eurex Clearing AG which may arise in connection with a Daily Profit Reduction shall be excluded.

(4) Resolution Cash Calls

(a) The Resolution Authority shall be entitled to require from (non-defaulting) Clearing Members and FCM Clearing Members (pursuant to the FCM Clearing Conditions) to provide further contributions to the Default Fund in the form of cash ("**Resolution Cash Calls**") to cover any outstanding Default Loss or Non-Default Loss.

(b) The Resolution Cash Calls may amount up to twice the applicable Contribution Requirement of the relevant Clearing Member.

(c) The total amount of Resolution Cash Calls, which is needed to cover all outstanding Default Losses or Non-Default Losses, shall be shared on a pro-rata basis between all Clearing Members and FCM Clearing Members and shall be proportional to the Contribution Requirement of the relevant Clearing Member or FCM Clearing Member.

For the avoidance of doubt, when determining the amount of a Resolution Cash Call with respect to a Clearing Member, any Contribution such Clearing Member provided with respect to all Basic Clearing Member Transactions under all Basic Clearing Member Standard Agreements with respect to which such Clearing Member acted in its capacity as Clearing Agent, shall be considered in the calculation.

(d) Notwithstanding Paragraph (1) above, the Resolution Authority is entitled to exercise Resolution Cash Calls regardless of whether Eurex Clearing AG has or has not fully exhausted any calls for Further Contribution pursuant to Chapter I Part 1 Number 6.3 of the Clearing Conditions.

(e) Any amount being payable under a Resolution Cash Call by the Clearing Member shall be provided in accordance with the daily cash processing pursuant to Chapter I Part 1 Number 1.4.1 of the Clearing Conditions.

(f) For the avoidance of doubt, if the Clearing Member is not able to pay amount due under a Resolution Cash Call, such non-payment will constitute a Termination Event pursuant to Chapter I Part 1 Number 7.2.1 (1) of the Clearing Conditions.

(g) If, after the exercise of the Resolution Cash Call, the Resolution Authority determines that the total amount obtained through the Resolution Cash Calls exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all Clearing Members and FCM Clearing Members, which were subject to the Resolution Cash Calls, will be reimbursed accordingly on a pro-rata basis.

(5) Enforcement of Outstanding Obligations

If the Resolution Authority makes use of resolution measures pursuant to Paragraph (2) to (5) with respect to a Clearing Member and the Resolution Authority prior to such resolution measures refrained partially or fully from enforcing the following rights with respect to a Clearing Member or BCM Clearing Member to

(i) call for Further Contribution or Further BCM Contribution pursuant to Chapter I Part 1 Number 6.3,

(ii) terminate and settle in cash DMP Cash Settlement Transactions pursuant to Chapter I Part 1 Number 7.5.4.1,

(iii) establish DM OTC Hedging Transactions, conduct additional DM OTC Auctions, or establish Additional OTC Transactions pursuant to Chapter I Part 1 Number 7.5.4.2, or

(iv) terminate and settle in cash all Transactions of a Relevant Liquidation Group pursuant to Chapter I Part 1 Number 7.5.4.3 (each a “Refrained Right”),

the Resolution Authority shall be entitled to enforce any Refrained Right within 18 months after the CCP is considered to be failing or likely to fail in accordance with Article 22 of the CCP Recovery and Resolution Regulation, provided that the reasons for refraining from enforcing the relevant Refrained Right no longer exist. The Resolution Authority shall notify the Clearing Member or BCM Clearing Member three months before enforcing the relevant Refrained Right. The proceeds from the enforced Refrained Right shall be used to recover the use of public funds.

17.7.3 Recognition of Resolution Measures

(1) The Clearing Member or Basic Clearing Member agrees to be bound by any Resolution Measure taken by the Resolution Authority in respect of the Clearing Member’s or Basic Clearing Member’s assets, rights, obligations and liabilities under the Clearing Agreement and the Clearing Conditions, including the application of Article 28 (position and loss allocation tools), Article 32 (write down and conversion tool), Article 55 (power to suspend certain obligations), Article 56 (power to restrict the enforcement of security interests) and Article 57 (power to temporarily suspend termination rights) of the CCP Recovery and Resolution Regulation.

“Resolution Measure” means the application of any resolution tool taken by the Resolution Authority as set out in Article 27 (1) or the exercise of a resolution power as set out in Articles 48 to 58 of the CCP Recovery and Resolution Regulation.

(2) The Clearing Member or the Basic Clearing Member further acknowledges that, pursuant to Article 54 of the CCP Recovery and Resolution Regulation, any Resolution Measure taken by the Resolution Authority with respect to Eurex Clearing AG does not give constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG pursuant to Chapter I Part 1 Number 9.3 of the Clearing Conditions.

[...]

Chapter I: Clearing Model Related Provisions

FCM Regulations of Eurex Clearing AG

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[...]

Chapter I Clearing Model Related Provisions

[...]

16 Miscellaneous

[...]

16.6 General Clearing Provisions in accordance with the CCP Recovery and Resolution Regulation

16.6.1 Deviating Decisions (Article 9 (6) of the CCP Recovery and Resolution Regulation

[...]

(3) [...]

- (iii) closely monitor the relevant situation and notify BaFin about any new developments in this regard.

16.6.2 Resolution Measures to be taken by the Resolution Authority

(1) General Requirements for Resolution Measures

If BaFin, acting in its capacity as Eurex Clearing AG's resolution authority within the meaning of the CCP Recovery and Resolution Regulation ("Resolution Authority"), determines that all conditions for resolution pursuant to Article 22 (1) of the CCP Recovery and Resolution Regulation are met, the Resolution Authority is entitled to take one of the following resolution measures pursuant to Paragraph (2) to (5) with respect to the FCM Clearing Member.

(2) Termination and Cash Settlement

- (a) The Resolution Authority shall be entitled to exercise the termination right under Number 9 above provided that the applicable requirements are met.

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(b) The Resolution Authority shall further be entitled to exercise the following rights with respect to a Clearing Member or Basic Clearing Member:

(i) to terminate and settle in cash DMP Cash Settlement Transactions pursuant to Number 9.6.1 above;

(ii) to establish DM Swap Hedging Transactions, to conduct one or more additional DM Swap Auctions and to establish Additional Swap Transactions pursuant to Number 9.6.2 above; or

(iii) to terminate and settle in cash all Liquidation Group Transactions under a specific Liquidation Group pursuant to Number 9.6.3 above.

(c) Prior to exercising any rights under Paragraphs (a) and (b) above, the Resolution Authority shall inform the relevant FCM Clearing Member about (i) the date on which such right will be exercised and (ii) any net amount being payable by or to the relevant FCM Clearing Member.

(d) Any net amount being payable by the FCM Clearing Member pursuant to Paragraph (a) or (b) shall be provided in accordance with the daily cash processing pursuant to Number 1.4.1 above.

(e) For the avoidance of doubt, if the FCM Clearing Member is not able to pay the relevant net amount determined pursuant to Paragraphs (a) or (b), such non-payment will constitute a Termination Event pursuant to Number 9.2.1 (1) (a) above.

(f) If the Resolution Authority exercised its rights under Paragraph (a) or (b), the Resolution Authority is entitled to suspend or limit the clearing of Swap Transactions with respect of which it has exercised its rights.

(3) Daily Profits Reduction

The Resolution Authority shall be entitled to exercise Daily Profit Reductions in accordance with this Paragraph (3) to cover any outstanding Default Loss or Non-Default Loss.

(a) This Paragraph (3) applies to Default Losses and Non-Default Losses.

“Default Loss” means any loss incurred by Eurex Clearing AG caused by the occurrence of a termination with respect to a FCM Clearing Member, a Clearing Member Termination or a Basic Clearing Member Termination pursuant to the Clearing Conditions.

“Non-Default Loss” means any loss incurred by Eurex Clearing AG, which does not qualify as a Default Loss.

(b) If

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(i) after the occurrence of the FCM Clearing Member Termination Time, the Clearing Member Termination Time or the Basic Clearing Member Termination Time, or

(ii) in case of the occurrence of a Non-Default Loss

Eurex Clearing AG is obliged to pay a Variation Settlement Amount to a (non-defaulting) FCM Clearing Member with respect to any Swap Transaction pursuant to Chapter II Part 2 Number 2.2.1 (5) of the FCM Regulations, the Resolution Authority is entitled to partly or fully reduce any IRS STM Amount and any IRS PAA arising from any Swap Transaction, ("**Daily Profit Reduction**").

(c) The total Daily Profit Reduction, which is needed to cover any outstanding Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all Clearing Members, Basic Clearing Members and FCM Clearing Members and shall be proportional to the open amounts Eurex Clearing AG owes to the relevant Clearing Member, Basic Clearing Member or FCM Clearing Member.

(d) If the Daily Profit Reductions is used by the Resolution Authority to cover any outstanding Non-Default Loss, it shall only be applied up to a cumulative amount equal to the FCM Contribution Requirement to the Default Fund of the relevant FCM Clearing Member.

The total Daily Profit Reduction, which is needed to cover all outstanding Non-Default Loss incurred by Eurex Clearing AG, shall be shared on a pro-rata basis between all FCM Clearing Members, Clearing Members and BCM Clearing Members and shall be proportional to the FCM Contribution Requirement, CM Contribution Requirement or BCM Contribution Requirement of the relevant FCM Clearing Member, Clearing Member or Basic Clearing Member.

(e) The Resolution Authority shall inform each affected FCM Clearing Member about the exercise of any Daily Profit Reduction without undue delay. If the Daily Profit Reduction relates to a FCM Client Transaction, the relevant FCM Clearing Member shall inform any affected FCM Client about the exercise of the Daily Profit Reduction by the Resolution Authority and the effects of the exercise for such FCM Clients.

(f) If, after the exercise of the Daily Profits Reduction, the Resolution Authority determines that the total amount gained through the Daily Profit Reductions exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all FCM Clearing Members, Clearing Members and Basic Clearing Members, which were subject to the Daily Profits Reductions, will be reimbursed accordingly on a pro-rata basis.

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(g) All claims for damages or any other restitution or compensation claim against Eurex Clearing AG which may arise in connection with a Daily Profit Reduction shall be excluded.

(4) Resolution Cash Calls

(a) The Resolution Authority shall be entitled to require from (non-defaulting) FCM Clearing Members and Clearing Members (pursuant to the Clearing Conditions) to provide further contributions to the Default Fund in the form of cash ("Resolution Cash Calls") to cover any outstanding Default Loss or Non-Default Loss.

(b) The Resolution Cash Calls may amount up to twice the applicable FCM Contribution Requirement of the relevant FCM Clearing Member.

(c) The total amount of Resolution Cash Calls, which is needed to cover all outstanding Default Losses or Non-Default Losses, shall be shared on a pro-rata basis between all FCM Clearing Members and Clearing Members and shall be proportional to the FCM Contribution Requirement or the CM Contribution Requirement of the relevant FCM Clearing Member or Clearing Member.

(d) Notwithstanding Paragraph (1) above, the Resolution Authority is entitled to exercise Resolution Cash Calls regardless of whether Eurex Clearing AG has or has not fully exhausted any calls for FCM Further Contribution pursuant to Number 3.3 of the FCM Default Rules.

(e) Any amount being payable under a Resolution Cash Call by the FCM Clearing Member shall be provided in accordance with the daily cash processing pursuant to Number 1.4.1 above.

(f) For the avoidance of doubt, if the FCM Clearing Member is not able to pay amount due under a Resolution Cash Call, such non-payment will constitute a Termination Event pursuant to Number Number 9.2.1 (1) (a) above.

(g) If, after the exercise of the Resolution Cash Call, the Resolution Authority determines that the total amount obtained through the Resolution Cash Calls exceeds the amounts needed to cover all Default Losses or Non-Default Losses, all FCM Clearing Members and Clearing Members, which were subject to the Resolution Cash Calls, will be reimbursed accordingly on a pro-rata basis.

(5) Enforcement of Outstanding Obligations

If the Resolution Authority makes use of resolution measures pursuant to Paragraph (2) to (5) with respect to a FCM Clearing Member and the Resolution Authority prior to such resolution measures refrained partially or fully from enforcing the following rights with respect to a FCM Clearing Member to

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- (i) call for FCM Further Contribution pursuant to Number 3.3 of the FCM Default Rules.
- (ii) terminate and settle in cash DMP Cash Settlement Transactions pursuant to Number 9.6.1 above.
- (iii) establish DM Swap Hedging Transactions, conduct additional DM Swap Auctions, or establish Additional Swap Transactions pursuant to Number 9.6.2 above, or
- (iv) terminate and settle in cash all Transactions of a Relevant Liquidation Group pursuant to Number 9.6.3 (each a “**Refrained Right**”).

the Resolution Authority shall be entitled to enforce any Refrained Right within 18 months after the CCP is considered to be failing or likely to fail in accordance with Article 22 of the CCP Recovery and Resolution Regulation, provided that the reasons for refraining from enforcing the relevant Refrained Right no longer exist. The Resolution Authority shall notify the FCM Clearing Member three months before enforcing the relevant Refrained Right. The proceeds from the enforced Refrained Right shall be used to recover the use of public funds.

16.6.3 Recognition of Resolution Measures

- (1) The FCM Clearing Member agrees to be bound by any Resolution Measure taken by the Resolution Authority in respect of the FCM Clearing Member’s assets, rights, obligations and liabilities under the FCM Clearing Agreement and the FCM Regulations, including the application of Article 28 (position and loss allocation tools), Article 32 (write down and conversion tool), Article 55 (power to suspend certain obligations), Article 56 (power to restrict the enforcement of security interests) and Article 57 (power to temporarily suspend termination rights) of the CCP Recovery and Resolution Regulation.

“**Resolution Measure**” means the application of any resolution tool taken by the Resolution Authority as set out in Article 27 (1) or the exercise of a resolution power as set out in Articles 48 to 58 of the CCP Recovery and Resolution Regulation.

- (2) The FCM Clearing Member further acknowledges that, pursuant to Article 54 of the CCP Recovery and Resolution Regulation, any Resolution Measure taken by the Resolution Authority with respect to Eurex Clearing AG does not constitute a Failure to Pay Event or an Insolvency Event with respect to Eurex Clearing AG pursuant to Number 11.3 above.
